

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JOYCE L. MITCHELL and)
KAREN R. STONER,)
Plaintiffs,)
vs.) Case No. 14-0636-CV-W-FJG
COVIDIEN PLC, et al.,)
Defendants.)

ORDER

Pending before the Court are (1) Defendants' Motion to Stay Pending a Transfer to In re: Cook Medical, Inc., Pelvic Repair Sys. Prods. Liab. Litig., MDL No. 2440 (Doc. No. 7); (2) Defendants Covidien PLC, Covidien LP, and Covidien Holding Inc.'s Motion to Dismiss Plaintiffs' Complaint (Doc. No. 14); and (3) Defendants Covidien PLC, Covidien LP, and Covidien Holding Inc.'s Renewed Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 23).

As an initial matter, Defendants Covidien PLC, Covidien LP, and Covidien Holding Inc.'s Motion to Dismiss Plaintiffs' Complaint (Doc. No. 14) is **DENIED AS MOOT**, as plaintiffs filed an amended complaint as a matter of right after the filing of the first motion to dismiss.

Defendant Covidien LP requests a brief stay of all proceedings pending a final ruling from the JPML that this action be transferred to the United States District Court for the Southern District of West Virginia for inclusion in In re: Cook Medical, Inc., Pelvic Repair Sys. Prods. Liab. Litig., MDL Case No. 2440 ("Cook MDL"), before the Honorable Joseph R. Goodwin. At the present, a conditional transfer order has been entered by the JPML; however, plaintiffs have filed opposition to the CTO, and no final ruling on transfer has been made.

This Court may, in its discretion, grant a stay when it serves the interest of judicial economy and efficiency. Particularly in a case where an MDL transfer is pending, the Court should balance three factors to determine whether a stay would meet that standard:

(1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicative litigation if the cases are in fact consolidated. See Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D. Cal. 1997).

After considering the arguments presented by the parties, the Court agrees with the Defendant Covidien LP that the interests of justice and efficiency would be served by a stay. In particular, interests of judicial economy weigh in favor of entering a stay in order to avoid duplicative proceedings, particularly given that plaintiff Karen Stoner already has a complaint pending in MDL 2440 alleging injuries related to a different pelvic mesh product implanted at the same time, during the same surgery, as the pelvic mesh product at issue in the present case. The potential prejudice to plaintiffs is minimal, given that the action is still in its infancy and discovery has not commenced. Furthermore, defendants' pending renewed motion to dismiss "can be presented to and decided by the transferee judge." In re Prudential Ins. Co. of Am. Sales Practices Litig., 170 F. Supp. 2d 1346, 1347 (J.P.M.L. Aug. 15, 2001); In re Ivy, 901 F.2d 7, 9 (2d Cir. 1990).

Although plaintiffs argue in their suggestions in opposition (Doc. No. 10) that Covidien is not a named defendant in the cases pending in the Cook MDL and that certain pretrial orders entered by Judge Goodwin prohibit new defendants from being added to the Cook MDL, the arguments raised by plaintiffs are better heard by the JPML and do not alter this Court's conclusion that a stay pending a final decision from the JPML would promote judicial economy and would not prejudice plaintiffs.

Therefore, Defendants' Motion to Stay Pending a Transfer to In re: Cook Medical, Inc., Pelvic Repair Sys. Prods. Liab. Litig., MDL No. 2440 (Doc. No. 7) is **GRANTED**. All proceedings in this case (including but not limited to the deadline for responding to defendants' renewed motion to dismiss (Doc. No. 23)) shall be stayed pending a final ruling by the Judicial Panel on Multidistrict Litigation on defendants' request for transfer of this action to the United States District Court for the Southern District of West Virginia for

inclusion in In re: Cook Medical, Inc., Pelvic Repair Sys. Prods. Liab. Litig., MDL Case No. 2440 (“Cook MDL”), before the Honorable Joseph R. Goodwin.

IT IS SO ORDERED.

/s/Fernando J. Gaitan, Jr.
United States District Judge

Dated: October 16, 2014
Kansas City, Missouri